

down the clock on the time period during which Comcast must comply with the news neighborhooding condition.²⁸²

Pursuant to the FCC Order, the news neighborhooding condition will be in effect for seven years,²⁸³ and due to Comcast's refusal to abide by the condition, more than seven months (or almost ten percent of this time period) has already gone by without Bloomberg receiving any benefit from it. Should this case be referred to an administrative law judge, it is almost certain that far more time will elapse before Bloomberg will be able to obtain relief and Comcast will be required to comply with the news neighborhooding condition. For example, the Bureau referred the WealthTV program carriage complaints to an administrative law judge in October 2008 yet the Commission did not act on the ALJ's Recommended Decision until June 2011.²⁸⁴ Similarly, the Bureau designated the Tennis Channel's program carriage complaint for hearing on October 5, 2010,²⁸⁵ and more than ten months later, the administrative law judge has not yet even issued a Recommended Decision. This means that the Commission will not address that Recommended Decision until at least 2012. Given this history, should the Bureau refer Bloomberg's Complaint to an administrative law judge, it will virtually guarantee that about two to three years of the seven-year period in which the news neighborhooding condition will be in effect will go by before Comcast will be required to comply with it.

²⁸² Comcast presents the Commission with two possibilities: (1) dismissing or denying Bloomberg's Complaint based on the arguments presented in its Answer; or (2) referring the case to an administrative law judge. Nowhere does Comcast justify this "heads I win, tails you lose" approach. If the issues presented in this case are of a nature that can be resolved in Comcast's favor without being referred to an administrative law judge, then they can also be resolved in Bloomberg's favor without such a referral.

²⁸³ See *supra* note 7.

²⁸⁴ In re Herring Broadcasting Inc., d/b/a WealthTV, et al., *Memorandum Opinion and Order*, 26 FCC Rcd 8971 (2011); In re Herring Broadcasting Inc., d/b/a WealthTV, et al., *Memorandum Opinion and Hearing Designation Order*, 23 FCC Rcd 14787 (MB 2008).

²⁸⁵ In re Tennis Channel, Inc. v. Comcast Cable Commc'ns, LLC, *Hearing Designation Order and Notice of Opportunity for Hearing for Forfeiture*, 25 FCC Rcd 14149 (MB 2010).

Aside from allowing Comcast to substantially reduce the time period during which it will be required to abide by the news neighborhooding condition, referring Bloomberg's Complaint to an administrative law judge is also wholly unnecessary. As reviewed above, this case revolves around two simple legal and policy questions. First, does the news neighborhood condition apply "now or in the future" or only to neighborhoods created after the date of the FCC Order? And second, are the channel groupings identified by Bloomberg neighborhoods pursuant to the terms of the condition or must a neighborhood have 10 or more channels and contain at least seventy percent of news channels as Comcast contends? The first question presents a straightforward legal issue that the Commission is in the best position to answer, and the second issue is best resolved by the Commission as well because it centers on what kind of channel groupings the Commission intended for its definition of neighborhood to cover.

To be sure, Comcast raises a litany of issues that it would like for an administrative law judge to examine in this proceeding.²⁸⁶ However, to the extent that they are not covered by the two questions set forth above, they are irrelevant to the outcome of this proceeding and amount to an attempt to send the parties and an administrative law judge on a wild-goose chase to delay the resolution of Bloomberg's Complaint. For example, in order to determine whether Comcast is failing to comply with the news neighborhooding condition, the Commission need not determine the identity of any non-news channels that might have to be displaced in order for Comcast to abide by the condition.²⁸⁷ Neither the identity of those channels nor any burdens that may be imposed on them by relocating are relevant to whether Comcast is complying with the language contained in the news neighborhooding condition. Neither is it necessary for the Commission to determine which "broadcast channels with must-carry rights stand in the way of Bloomberg's desired channel

²⁸⁶ See Answer, ¶ 99.

²⁸⁷ See *id.*

placement.”²⁸⁸ This is especially true given that Comcast has not pointed to a single example in the 368 channel groupings identified by Bloomberg in its Complaint where must-carry rights present a problem.

Moreover, it does not matter here what channels other than BTV may be independent news channels;²⁸⁹ that can be decided in future cases if other channels believe they are entitled to relief under the news neighborhooding condition. What is important for purposes of this case is that Comcast does not dispute that BTV qualifies as an independent news channel. Finally, as explained above, the Commission does not have to resolve here whether there is “an industry standard or practice regarding what constitutes news neighborhooding.”²⁹⁰ The Commission set forth a specific definition of the term in the news neighborhooding condition, and that definition governs in this proceeding. While, as reviewed above, Bloomberg believes that the Commission’s definition is consistent with industry practice, that issue, in the end, is not outcome determinative because it is the definition adopted by the Commission that matters.

In sum, the Commission is in the best position to interpret the meaning of the conditions that it places on mergers, not an administrative law judge. This is why the Commission regularly decides for itself the meaning of a condition and/or whether a party has violated a condition. *See, e.g., In re Comcast Corporation, Petition for Declaratory Ruling that The America Channel is not a Regional Sports Network*, Order, 22 FCC Rcd 17938, 17946 (2007) (determining that The America Channel was a regional sports network for purposes of a condition contained in the *Adelphia Order*); *In re CoreComm Commc’ns, Inc., and Z-Tel Commc’ns, Inc., Complainants, v. SBC Commc’ns, Inc., et al., Defendants*, Memorandum Opinion and Order, 18 FCC Rcd 7568, 7578 (2003) (granting Section 208 complaint

²⁸⁸ *Id.*

²⁸⁹ *See id.*, ¶ 99.

²⁹⁰ *Id.*

because incumbent local exchange carriers did not offer shared transport for IntraLATA toll traffic as required by a merger condition); *In re SBC Communications, Inc.; Apparent Liability for Forfeiture*, Forfeiture Order, 17 FCC Rcd 19923, 19923 (2002) (holding SBC liable for a \$6 million forfeiture for failing to offer shared transport under terms and conditions required by the SBC/Ameritech Merger Order); *Global NAPs, Inc., Complainant, Verizon Commc'ns, et al., Defendants*, Memorandum Opinion and Order, 17 FCC Rcd 4031, 4031 (2002) (granting Section 208 complaint because Verizon refused to permit a telecommunications carrier to opt into certain provisions of an interconnection agreement as required by a merger condition); *In re Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from MediaOne Group, Inc., Transferor, To AT&T Corp. Transferee*, Order, 16 FCC Rcd 456, 457 (2000) (finding that AT&T's letters did not satisfy a merger condition requiring the company to elect one of three Video Condition compliance options).

The Commission should do the same here. It is in the best position to determine whether Comcast is violating the news neighborhooding condition and also to provide Bloomberg with timely relief, a critical factor in this proceeding given the time-limited nature of the condition in question.²⁹¹

VI. THE COMMISSION NEED NOT OPINE ON VARIOUS REMEDIAL QUESTIONS POSED BY COMCAST

Comcast raises a host of questions concerning remedies the Commission may impose to ensure compliance with the news neighborhooding condition that are not implicated by this case.²⁹² As such, the Commission need not and should not address them in this proceeding. Rather, it

²⁹¹ Similarly, there is no need to consider the Declaration of Jennifer Gaiski, Exhibit 2 to the Answer. Ms. Gaiski's Declaration deals essentially with the history of the carriage of BTV on Comcast systems and past negotiation history. It is irrelevant to the Complaint, which is premised upon the neighborhooding condition contained in the FCC Order, which is subsequent to the matters raised in her Declaration. The Commission should disregard it in its entirety.

²⁹² See *id.*, ¶¶ 100-101.

should resolve these issues if they become the subject of dispute in a future case.²⁹³ Alternatively, Comcast may file a petition for declaratory ruling seeking the answers to its questions.

First, Comcast asks whether independent news networks must be moved into news neighborhoods if they would prefer not to be moved.²⁹⁴ This case, however, does not involve the relocation of an independent news channel against its will so that question is not relevant to this case. Comcast relatedly wonders whether an independent news channel has one opportunity to decide to move or multiple opportunities over the seven-year term of the condition.²⁹⁵ Here, Bloomberg promptly asked Comcast to move BTV in order to comply with the news neighborhooding condition so the Commission need not consider whether an independent news channel may decline to be moved and then change its mind.

Second, Comcast asks whether SD networks have a right to be in an HD neighborhood.²⁹⁶ As stated above, Bloomberg is not asking for BTV's SD feed to be included in any HD neighborhoods carried by Comcast so this issue is irrelevant to this case. Relatedly, Comcast asks whether SD and HD news channels must be combined into one neighborhood. Again, Bloomberg is not requesting such relief so this inquiry is irrelevant to this case. Moreover, Bloomberg sees no basis in the text of the condition to require Comcast to combine all SD and HD feeds of all news channels into a single neighborhood.

²⁹³ See *Yale Broadcasting Co. v. FCC*, 478 F.2d 594, 602 (D.C. Cir. 1972) *cert. denied*, 414 U.S. 914 (1973) (recognizing "the Commission's long standing policy of refusing to issue interpretative rulings or advisory opinions whenever the critical facts are not explicitly stated or there is a possibility that subsequent events will alter them.") (citing *Use of Broadcast Facilities by Candidates for Public Office*, *Public Notice*, 24 FCC.2d 832, 855 (1970) ("In general, the Commission . . . prefers to issue such rulings or opinions where the specific facts of a particular case in controversy are before it for decision"))).

²⁹⁴ See Answer, ¶ 100.

²⁹⁵ See *id.*

²⁹⁶ See *id.*

Third, Comcast asks whether it is required to “collapse all news channels into a single neighborhood.”²⁹⁷ Again, Bloomberg has made no such request here so the Commission does not have to decide that question in this proceeding. Comcast also asks whether, if only one neighborhood is permitted, “its placement in the channel lineup [is] within Comcast’s editorial discretion?”²⁹⁸ This hypothetical question is also not implicated by this proceeding. Bloomberg has not asked Comcast to collapse all news channels into a single neighborhood, let alone questioned the placement of that single neighborhood on Comcast’s channel lineups.

Fourth, Comcast asks about the appropriate time period for implementing the relocation of independent news channels, and in particular, whether that time period would be “consistent with LFA notice requirements.”²⁹⁹ In its Complaint, Bloomberg asked the Commission to require Comcast, within sixty days, to carry BTV in any channel grouping containing at least four news channels within a block of five adjacent channel positions on any Comcast headend in the top 35 most-populous DMAs that carries BTV.³⁰⁰ Comcast in its Answer neither raises any specific objection to this sixty-day time period nor claims that it is inconsistent with LFA notice requirements. Accordingly, should the Commission decide that Comcast is violating the news neighborhooding condition, Comcast has waived its right to contest Bloomberg’s request for relief to be provided within sixty days.

Fifth, Comcast asks whether there are guidelines for the possible displacement and relocation for other networks that may be caused by the news neighborhooding condition and whether those networks have any right to object to implementation of the condition.³⁰¹ It is up to Comcast, not

²⁹⁷ *Id.*

²⁹⁸ *Id.*

²⁹⁹ *Id.*

³⁰⁰ See Complaint at Section VIII.e.

³⁰¹ See Answer, ¶ 100.

the Commission, to deal with any networks that may need to be relocated for Comcast to bring itself into compliance with the news neighborhooding condition. The news neighborhooding condition neither contains any such guidelines, nor does it give other networks any veto power over implementation of the condition. As reviewed above, Comcast has implemented thousands of channel changes over the course of the past year so any claim that the company requires guidelines for handling such changes is not credible.

Finally, Comcast asks whether it is required to place BTV in multiple news neighborhoods.³⁰² As explained above,³⁰³ Bloomberg believes that the news neighborhooding condition requires Comcast to place BTV in any standard definition neighborhood that exists on a Comcast headend. However, in those instances where two standard definition news neighborhoods exist on a Comcast headend, Bloomberg is content to be carried only in the neighborhood that includes CNBC.

VII. CONCLUSION

For all of the foregoing reasons, the Commission should expeditiously grant the relief requested by Bloomberg in its Complaint:

- (a) Find that Comcast carries news channels in neighborhoods;
- (b) Find that Comcast has willfully refused to place BTV in news neighborhoods on its systems;
- (c) Find Comcast in violation of the news neighborhooding condition in the FCC Order (Section II.2 of Appendix A);
- (d) Declare that the news neighborhooding condition requires Comcast to place BTV in any channel grouping containing at least four news channels within a block of five adjacent channel positions;

³⁰² *See id.*

³⁰³ *See supra* Section III.D.

- (e) Require Comcast, within sixty days, to carry BTV in any channel grouping containing at least four news channels within a block of five adjacent channel positions on any Comcast headend in the top 35 most-populous DMAs that carries BTV (listed in Exhibit G to the Complaint and Exhibit H of this Reply); and
- (f) Any other relief the Commission finds appropriate.

Respectfully submitted,

BLOOMBERG L.P.

By 

Stephen Díaz Gavin

Kevin J. Martin

Janet F. Moran

Matthew B. Berry

Carly Didden

PATTON BOGGS LLP

2550 M Street, N.W.

Washington, DC 20037

(202) 457-6000

Robert Silver

BOIES SCHILLER & FLEXNER LLP

575 Lexington Avenue, 7th Floor

New York, NY 10022

(212) 446-2300

Its Counsel

Dated: August 30, 2011

VERIFICATION

I, Stephen Díaz Gavin, do declare and hereby state under penalty of perjury, as follows:

1. I am Counsel for Bloomberg L.P.
2. I have read the foregoing Reply of Bloomberg L.P. to Answer of Comcast Cable Communications, LLC. To the best of my knowledge, information, and belief, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law. It is not interposed for any improper purpose.

August 30, 2011



Stephen Díaz Gavin
Counsel for Bloomberg L.P.

Partner
Patton Boggs LLP
2550 M Street, N.W.
Washington, DC 200037

CERTIFICATE OF SERVICE

I, Matthew Berry, do hereby certify that copies of the attached "Bloomberg Response to Answer of Comcast Cable Communications, LLC" were served on the parties listed below by first-class mail, postage prepaid, this 30th day of August 2011:

Michael P. Carroll
Arthur J. Burke
Rajesh S. James
Davis Polk & Wardwell LLP
450 Lexington Avenue
New York NY 10017

David H. Solomon
J. Wade Lindsay
Wilkinson Barker Knauer, LLP
2300 N Street NW, Suite 700
Washington DC 20037

Lynn R. Charytan
Justin Smith
Frank La Fontaine
Comcast Corporation
2001 Pennsylvania Avenue NW
Suite 500
Washington DC 20006

Sarah L. Gitchell
Thomas R. Nathan
Comcast Cable Communications LLC
One Comcast Center
Philadelphia PA 19103

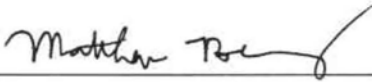

Matthew B. Berry

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EXHIBIT A

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

| | | |
|-----------------------------------|---|----------------------|
| In re Complaint of |) | |
| |) | |
| BLOOMBERG L.P. |) | MB Docket No. 11-104 |
| |) | |
| v. |) | |
| |) | |
| COMCAST CABLE COMMUNICATIONS, LLC |) | |
| |) | |
| |) | |
| |) | |

REPLY DECLARATION OF GREGORY S. CRAWFORD

I, Gregory S. Crawford, hereby declare under penalty of perjury that the following is true and correct to the best of my knowledge.

1. My name is Gregory S. Crawford. I am currently a Professor of Economics at the University of Warwick in the United Kingdom. I received a Ph.D. in Economics from Stanford University in 1998. I was an assistant professor at Duke University as well as an assistant and later associate professor at the University of Arizona.

2. In 2007-08, I served as Chief Economist of the Federal Communications Commission (the "FCC" or "Commission"), an independent Federal regulatory agency charged with regulating a number of media and communications industries, including cable and satellite television. During my time at the Commission, I provided advice related to a number of topics, including mergers, spectrum auction design, media ownership, network neutrality, and the bundling of video channels.

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3. After my service at the FCC, I joined the Department of Economics at the University of Warwick in the United Kingdom as a full professor. I am also Director of Research for the University's Economics Department.

4. In 2011, I was invited to be a research fellow at the Centre for Economic Policy Research ("CEPR"), one of the leading European research networks in economics.

5. I conduct research on topics in industrial organization as well as law and economics. Much of my research has analyzed the cable and satellite television industries. Particularly relevant for this proceeding, I have published extensively at the intersection of these fields, evaluating conditions of demand and supply within the cable television industry and the consequences of regulation on economic outcomes in cable markets. I have published numerous academic articles in such outlets as the *American Economic Review*, *Econometrica*, the *RAND Journal of Economics*, and the *Journal of Law and Economics*. My works include: "The Impact of the 1992 Cable Act on Household Demand and Welfare," *RAND Journal of Economics*, v.31, n.3 (Autumn 2000), 422-49; "Monopoly Quality Degradation and Regulation in Cable Television" (with Matthew Shum), *Journal of Law and Economics*, v.50, n.1 (February 2007), 181-209; "Bundling, Product Choice, and Efficiency: Should Cable Television Networks Be Offered A La Carte?" (with Joseph Cullen), *Information Economics and Policy*, v.19, n.3-4 (October 2007), 379-404; and "The Welfare Effects of Bundling in Multichannel Television Markets," (with Ali Yurukoglu), forthcoming, *American Economic Review*. I have attached my CV as Attachment A to this Declaration.

6. When the National Bureau of Economic Research ("NBER") commissioned a volume analyzing the consequences of economic regulation across a number of American industries, I was asked to write the chapter on cable television. The NBER is the largest economics research organization in the United States. The chapter is titled, "Cable Regulation in the Satellite

Era,” Chapter 5 in Rose, N., ed., “Economic Regulation and Its Reform: What Have We Learned?” forthcoming, University of Chicago Press.

7. Earlier this year, I was asked by Bloomberg L.P. (“Bloomberg”) to evaluate the extent to which Comcast distributes news, business news, and/or public affairs television channels in neighborhoods on its cable systems’ channel lineups.

8. I provided a declaration which was filed with the FCC on June 13, 2011, as part of a complaint by Bloomberg alleging that Comcast Cable Communications, LLC (“Comcast”) has failed to implement the condition relating to news neighborhoods adopted by the Commission when it granted Comcast’s application to transfer control of licenses from GE to Comcast (“the FCC Order”).¹

9. The majority of my previous declaration described patterns of Comcast’s television channel carriage and placement, particularly of news channels, based on “channel lineup data” provided by Tribune Media Services (TMS). The data provided information on channel lineups for all of the major providers of multichannel video programming within the United States as of May 4, 2011.

10. Comcast replied to this complaint (“Comcast Answer”) on July 27, 2011. The declarations of Michael Egan (Exhibit 4, “Egan Declaration”) and Mark A. Israel (Exhibit 5, “Israel Declaration”) also referenced the analysis of channel lineup data from TMS. I have read Comcast’s Answer with a particular focus on the Egan Declaration and the Israel Declaration.

¹ See In the Matter of Applications of Comcast Corp., General Electric Co., and NBC Universal, Inc. For Consent to Assign Licenses and Transfer Control of Licenses, *Memorandum Opinion and Order*, 26 FCC Rcd 4238, 4358 (App. A, Sec. III.2) (2011).

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11. I have since been asked by Bloomberg to evaluate several additional issues in light of the Comcast Answer. In particular, I've been asked: (1) to evaluate how designating additional channels as news channels would influence the conclusions in my previous declaration regarding Comcast's neighborhooding of news channels; (2) to analyze patterns of news channel carriage by other cable television operators, particularly Cox Communications ("Cox"), Charter Communications ("Charter"), Cablevision Systems Corporation ("Cablevision"), and Time Warner Cable ("Time Warner"); (3) to analyze patterns of sports channel carriage by Comcast and other cable operators; (4) to analyze the extent to which Comcast carries the same network in multiple channel positions on the same headend; (5) to analyze the extent to which Comcast excludes the C-SPAN family of channels from news neighborhoods that also exclude Bloomberg TV ("BTV") on headends in top 35 DMAs that carry BTV; and (6) to analyze the extent to which Comcast has changed their channel lineups between June 16, 2010 and May 4, 2011. I describe each of these tasks in turn.

12. In Attachment B to the Egan Declaration, Mr. Egan provides a list of news channels carried by the top 14 MVPDs; included in this list were a large number of broadcast multicast channels. Counsel for Bloomberg has asked me to repeat my analysis of Comcast's channel lineups in the event that 28 of the channels on that list would be counted as news channels. These 28 channels are listed below as Attachment B to this declaration.

13. There were a total of 227 instances of these 28 channels across the 1,014 Comcast headends in the raw 2011 data, adding an average of only 0.22 additional news channels per headend.

14. As in my previous analysis of the 2011 data, I resolved to keep a single channel lineup per headend (as described in paragraphs 17-20 of my previous declaration) and eliminated

any remaining instances of multiple channels being offered in the same channel position (as described in paragraphs 21-25 of my previous declaration).² In so doing, I included all the channels listed in Attachment B to this declaration in addition to all of those listed in Appendix B of my previous declaration.

15. This process eliminated a small number of instances of these 28 stations, yielding a total of 222 instances of these 28 channels in my final dataset, adding an average of only 0.22 additional news channels per headend.

16. As in my previous analysis of the 2011 data, I defined news neighborhoods as described in paragraphs 26-39 of my previous declaration. In so doing, I included all those news channels listed in groups (1)-(5) and (8) in Appendix B of my previous declaration as well as the 28 additional channels described above and listed in Attachment B below.

17. Having done so, I was able to compare the conclusions I drew in my previous declaration with the conclusions reached after also including the 28 channels listed in Attachment B below.

18. The addition of these 28 channels had a negligible effect on the conclusions I drew in my previous declaration.³

² The 28 additional channels yielded 3 additional instances of multiple channels in the same channel position that involved a news channel. These were all cases of two multicast broadcast channels sharing the same channel position. In these cases, if only one was a news channel, I kept the news channel. If both were news channels, I kept the channel whose name comes first in alphabetical order.

³ In conducting the analysis I present here, I found a small error in the Stata code underlying my earlier analysis. This error inadvertently mislabeled one set of channels that should have

19. Using the definition of news neighborhoods described in my previous declaration at paragraph 39, I previously found that out of Comcast's 1,014 headends, 677 (or 66.8%) have news neighborhoods. There is no change in the results from adding the 28 additional multicast channels listed in Attachment B.

20. There is similarly no change in many of the other conclusions I drew. In both cases:

- a. 759 (74.9%) of Comcast headends carry BTV.
- b. Of these, 599 (78.9%) have news neighborhoods.
- c. 485 of 604 Comcast headends in the 35 most populous DMAs carry BTV and, of these, 418 (86.2%) have news neighborhoods.
- d. Of these 418 Comcast headends in top-35 DMAs that carry BTV, 369 have a news neighborhood with U.S. news channels that does not include BTV. (In my previous declaration, I evaluated how many of Comcast's headends in the top-35 DMAs that carried BTV had a news neighborhood that did not include BTV.

qualified as a 4-in-5 news neighborhood. The most noticeable effect of this error is that there is one additional Comcast headend that offers a news neighborhood. Thus, 677 (instead of 676) Comcast headends have news neighborhoods, and 369 (instead of 368) Comcast headends are located in the 35 most populous DMAs, carry BTV, and have a news neighborhood that does not include BTV. This additional headend is headend [REDACTED], serving (among other communities) [REDACTED] in the [REDACTED].

In what follows, to allow for an apples-to-apples comparison of the effects of including the 28 channels listed in Attachment B below, I present the analysis from my previous declaration having fixed this error. As a result, the specific numbers presented here as representing the conclusions from my previous declaration may differ very slightly from the numbers actually presented in that declaration.

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The answer is 369. Furthermore, all of those news neighborhoods contained U.S. news channels. Including the additional multicast channels listed in Attachment B below yielded 2 additional headends in the top 35 DMAs that carry BTV that previously did not have a news neighborhood that excluded BTV but now do. Based on an analysis of the programming offered on the news channels in these neighborhoods undertaken by counsel for Bloomberg, I can conclude that all the news channels in these 2 new neighborhoods exclusively offer foreign news content. Since Bloomberg is not requesting that BTV be added to these groupings of foreign news channels, I do not include these 2 headends in my analysis).

- e. Of these 418 headends, 365 have news neighborhoods that include CNBC but not BTV, whereas only 17 have news neighborhoods that include both CNBC and BTV.
- f. Of the 369 headends described in paragraph 20(d) above, 99.7% (368) include HLN in a news neighborhood that excludes BTV, 98.9% (365) include CNBC in such a neighborhood, 97.3% (359) include CNN in such a neighborhood, 93.5% (345) include Fox News in such a neighborhood, and 61.8% (228) include MSNBC in such a neighborhood.

21. The 28 additional multicast channels did not even affect the number of news channels in the 369 news neighborhoods described in paragraph 20(d). On the same headends, I found that the average news neighborhood that does not include BTV contains 5.05 news channels with or without the additional channels. The distribution of the number of news channels in such

neighborhoods was also the same in both cases: 269 of the neighborhoods have five news channels, 46 have six, 46 have four, and 8 have seven or more.

22. Indeed, the only conclusions where the additional multicast channels listed in Attachment B had any effect were the incidence of multiple news neighborhoods, the total number of news channels on the headend, and the associated share of news channels within news neighborhoods. In particular, I found that among the 369 headends in top-35 DMAs that carry BTV and have a news neighborhood that does not include BTV:

- a. The analysis underlying my previous declaration found that 50 of these headends had more than one news neighborhood.⁴ Adding the 28 additional channels listed in Attachment B yields, instead, 51 headends with more than one news neighborhood. In 50 of these 51, BTV is in a neighborhood located above channel 100. In both my previous and current analyses, none of these headends have more than two news neighborhoods containing U.S. news channels.
- b. In my previous declaration, I found that the average such headend carried 11.03 news channels and 46.2% of news channels in a news neighborhood that did not include BTV. Furthermore, 363 of these 369 (98.4%) of these headends carried 33% or more of news channels in a news neighborhood that did not include BTV.

⁴ In my previous declaration, I focused on the 48 of these 50 headends that had a news neighborhood below channel 100 that contained CNBC and another neighborhood above channel 100 that contained BTV. There were two other headends that had two news neighborhoods, one below and one above channel 100. On these two headends, while BTV was carried in the neighborhood above channel 100, CNBC was not carried in the neighborhood below 100 (although MSNBC was).

- c. Adding the additional multicast channels, I find that the average such headend carries 11.43 news channels and 44.9% of news channels in a news neighborhood that does not include BTV. Furthermore, 349 of these 369 (94.6%) headends now carry 33% or more of their news channels in such neighborhoods.

23. Counsel for Bloomberg also asked me to evaluate my conclusions under the scenario that The Weather Channel is added to the list of news channels included in my original analysis, both while maintaining a 4-in-5 definition of a news neighborhood and also extending it to a 5-in-6 definition. While these changes have more substantial effects than adding the 28 multicast channels listed in Attachment B, here too the qualitative conclusions are similar.

24. For the case of adding The Weather Channel while keeping a 4-in-5 news neighborhood definition, the greatest immediate effect is that there are now more news neighborhoods. Whereas 677 of 1,014 Comcast headends had news neighborhoods in my original analysis, adding The Weather Channel yields 699 headends that do. Among Comcast headends in top 35 DMAs that carry BTV, 369 had neighborhoods that did not include BTV in my previous analysis, and 384 do with the addition of The Weather Channel. Of these 384 headends, 58 (versus 50 in my previous analysis) have two news neighborhoods. In each of these 58 headends, there is a news neighborhood above channel 100 that includes BTV.

25. If The Weather Channel is counted as a news channel, the average number of news channels in news neighborhoods (within these 384 headends) rises to 5.73, the average number of total news channels on each headend rises to 12.05, and the average percentage of news channels in news neighborhoods that do not include BTV rises to 48.0%. 376 of these 384 headends (or 97.9%) have a share of news channels in news neighborhoods of at least 33%.

26. As expected, adding The Weather Channel and extending the definition of a news neighborhood to 5-in-6 yields fewer news neighborhoods (though not substantially fewer). Under these conditions, 574 of Comcast's 1,014 headends (56.6%) now have news neighborhoods and 347 of the 485 headends (71.5%) in top-35 DMAs that carry BTV have neighborhoods that do not include BTV. The average number of news channels in such neighborhoods on these 347 headends is 5.88, the average number of total news channels on these headends is 12.10, and the average percentage of news channels in such neighborhoods is 49.0%. 105 of these headends carry 5 news channels in such neighborhoods, 187 carry 6, and the rest (55) carry 7, 8, or 9.

27. I was also asked by counsel for Bloomberg to analyze patterns of news channel carriage among cable operators other than Comcast, particularly Cox, Charter, Cablevision, and Time Warner. These companies are, after Comcast, the four next largest cable operators in the United States.

28. I did this analysis using the same TMS data from May 4, 2011, that formed the basis of my previous declaration. I did not add the 28 multicast channels listed in Attachment B below. The steps I took for each additional MSO followed closely those that I took in obtaining channel lineups for the 2011 Comcast data (described in detail in paragraphs 10-49 in my previous declaration). In what follows, I only briefly cover the steps where they are identical to that for the 2011 Comcast data and focus my description on those few cases where the steps were different.

29. I began by merging the three raw TMS databases as I did for the 2011 Comcast analysis, but saving for each cable operator mentioned above only the headends identified as being owned by them. The result was 39,335 headend-channel positions across 86 headends for Cox, 172,062 headend-channel positions across 493 headends for Charter, 29,019 headend-channel

positions across 46 headends for Cablevision, and 433,849 headend-channel positions across 728 headends for Time Warner.

30. I next defined the set of possible news, business news, and public affairs channels that were to be the focus of my analysis. This followed the steps described in my previous declaration in paragraphs 14-16.

31. As in the 2011 Comcast data, there were again many instances of multiple channels being offered on a single channel position due to headends providing different channel lineups according to the device households were using to receive the programming. As for the 2011 Comcast data, for simplicity I decided to keep one channel lineup per headend. I followed the same rule as there: I kept the Digital (non-rebuild) lineup if one was offered and the Analog lineup if one was not.

32. For Cox, the result was 74 Digital (non-rebuild) lineups and 12 Analog lineups. For Charter, the result was 442 Digital (non-rebuild) lineups, 49 Analog lineups, and 2 Digital (rebuild) lineups.⁵ For Cablevision, the result was 44 Digital (non-rebuild) lineups and 2 Analog lineups. For Time Warner, the result was 592 Digital (non-rebuild) lineups, 133 Analog lineups, 1 Digital (rebuild) lineup, and 2 Analog (rebuild) lineups.⁶

⁵ Charter had one headend with an Analog lineup and a Digital (rebuild) lineup, and one headend with an Analog lineup, an Analog (rebuild) lineup, and a Digital (rebuild) lineup. In these two cases, I selected the Digital (rebuild) lineup. This decision was made because the cable industry is migrating to all-digital systems and digital lineups are therefore more relevant for the future than are analog lineups.

⁶ Time Warner had one headend with Analog and Digital (rebuild) lineups and two headends with Analog and Analog (rebuild) lineups. For the same reasons outlined above, in the first case I kept the Digital (rebuild) lineup. In the second case, I kept the Analog (rebuild) lineup because it

33. This resolved many but not all of the instances of multiple channels being offered on a single channel position. Similar to what occurred in the 2011 Comcast analysis presented in my previous declaration, for each cable operator there were a small number of channel positions (always less than 1%) for which there were multiple channels with different names reported at the same channel position on the same device.

34. As for the 2011 Comcast data, I resolved these first by dropping duplicate channels if they shared the same channel name and ignoring differences in names if none of the affected channels was a news channel.

35. After these steps, the remaining channel position conflicts were cases of multiple different channels at least one of which was a news channel. Rather than resolve these by hand (as I did in my previous declaration), I constructed an automated system to determine which channel to keep.

36. If there was only one news channel among the duplicated channels, I kept it. If there were 2 or more news channels among the duplicates, I investigated the type of news channel it was. If only one was a news channel among the 5 most widely distributed news channels (CNBC, CNN, Fox News, HLN, or MSNBC), I kept it. If there were either none or two or more such channels, I kept the news channel whose name came first in alphabetical order. This resolved all the duplicates for each of the cable operators.

37. All of these steps resulted, for each cable operator, in the final dataset on which I performed my analysis of their 2011 neighborhoods of news, business news, and public affairs

likely represents the most technologically advanced lineup offered by that headend and is therefore the lineup closest in spirit to the Digital lineups I kept when making similar choices for other headends.

channels. For Cox, the dataset contained 32,721 channel positions on 86 headends. For Charter, the dataset contained 134,979 channel positions on 493 headends. For Cablevision, the dataset contained 24,951 channel positions on 46 headends. For Time Warner, the dataset contained 328,002 channel positions on 728 headends.

38. I next defined news neighborhoods following the steps described in paragraphs 26-39 of my previous declaration and calculated all of the same objects that were the subject of my analysis of the 2011 Comcast data (*e.g.*, the incidence of news neighborhoods, whether they included BTV, whether they included other news channels, etc.) as described in paragraphs 40-49 of my previous declaration.

39. The patterns in the carriage of news channels in news neighborhoods for other operators are similar to that seen on Comcast's lineups.

40. For Cox, 72 of its 86 headends (83.7%) carry BTV.⁷ Of these headends, 36 (50.0%) have a news neighborhood below channel 100. The average number of news channels in these news neighborhoods is 4.28, the average total number of news channels on these 36 headends is 11.39, and the average share of news channels in these news neighborhoods on these 36 headends is 37.7%. Among these 36 headends, 26 (72.2%) of these news neighborhoods have four news channels and the remaining 10 (27.8%) have five news channels.

41. For Charter, 348 of its 493 headends (70.6%) carry BTV, a share that rises to 146 of 171 (85.4%) in top-35 DMAs. Of these 146 headends, 92 (or 63.0%) have a news neighborhood below channel 100. The average number of news channels in these neighborhoods on these 92

⁷ Because there is only a small sample of Cox headends that both carry BTV and are located in the top 35 DMAs, I chose to analyze all Cox headends that carry BTV.

headends is 5.01, the average total number of news channels on these headends is 10.05, and the average share of news channel in these news neighborhoods on these 92 headends is 50.3%.

Among these 92 headends, 12 (13.0%) have news neighborhoods with four news channels, 68 (73.9%) have news neighborhoods with five news channels, and the balance (12) have news neighborhoods with six or more news channels.

42. For Cablevision, 44 of its 46 headends (95.7%) carry BTV (all of which are in top-35 DMAs). Of these 44 headends, 43 (or 97.7%) have a news neighborhood below channel 100. The average number of news channels in these neighborhoods on these 43 headends is 4.12, the average total number of news channels on these 43 headends is 10.07, and the average share of news channels in these news neighborhoods on these 43 headends is 40.9%. Among these 43 headends, 39 (90.7%) have news neighborhoods with four news channels, and the balance (4) have news neighborhoods with five or more news channels.

43. For Time Warner, 575 of its 728 headends (79.0%) carry BTV, as do 228 of its 305 headends (74.8%) in top-35 DMAs. Of these 228 headends, 84 (or 36.8%) have a news neighborhood below channel 100. The average number of news channels in these neighborhoods on these 84 headends is 5.15. Among these 84 headends, 22 (26.2%) have news neighborhoods with four news channels, 34 (40.5%) have news neighborhoods with five news channels, 24 (28.6%) have news neighborhoods with six news channels, and the balance (4) have news neighborhoods with seven or more news channels.

44. As requested by counsel for Bloomberg, I calculated the probability that a 4-in-5 news neighborhood would be located on a headend for Cox, Charter, and Cablevision if channel lineups were determined randomly.